

**TENNESSEE CONSOLIDATED RETIREMENT SYSTEM**  
**BOARD OF TRUSTEES MEETING**  
**FEBRUARY 26, 2016**

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**QUALIFIED DOMESTIC RELATIONS ORDER  
(QDRO)**



February 16, 2016

Dear Board Member,

During the 2013 Legislative session, the General Assembly enacted legislation authorizing TCRS to recognize claims under a Qualified Domestic Relations Order (QDRO). Tenn. Code Annotated Section 8-36-128 states the provision will become effective "at a time designated by the state Treasurer". Since the legislation's effective date, TCRS has been reviewing best practices and current processes to develop appropriate operational procedures for reviewing and honoring QDROs. Additionally, TCRS has worked to program the new Concord system to appropriately handle the complexities of a QDRO. It has been determined that recognition of QDROs in TCRS will begin July 1, 2016.

A QDRO is a court order used as part of a division of property in a divorce proceeding. In general, public plans such as TCRS are not required to recognize QDROs. For purposes of TCRS, the QDRO recognizes that the ex-spouse is entitled to a certain portion of a member's retirement benefits. The order would allocate a portion of a member's monthly retirement benefits that accrued during the period of marriage. Once the member retires, the ex-spouse would receive a designated value or percentage of the benefit through a direct payment from TCRS and the ex-spouse would be responsible for associated taxes. The payments cease upon the death of either party. In addition, a QDRO could also designate that a refund of member contributions be divided between the member and ex-spouse.

TCRS has developed Rules that prescribe the requirements for submission, content, and payment, of QDROs such that the law will be implemented, and QDROs may be honored, in a consistent manner. TCRS used several sources in developing its Rules, including the QDRO laws and Rules of other state pension programs. As part of the Rules, TCRS will develop a required QDRO form so that parties can easily and accurately meet all requirements and QDROs can be consistently and efficiently reviewed and processed. The draft Rules are included with this letter and are intended to be published in accordance with the Uniform Administrative Procedures Act. Once the Rules are approved by the Board of Trustees, the Rules will be sent to the Attorney General's office for review. After approval by the Attorney General, the Rules are submitted to the Secretary of State's office. The Rules become effective after 90 days unless a hearing is requested. Our intention is for the full process to be completed by July 1, 2016.

The Treasury Department will be communicating with a number of organizations, including the Tennessee Administrative Office of the Courts, the Tennessee Bar

Association, and domestic relations attorneys, regarding the use of QDROs in TCRS. Important matters such as the effective date, the Rules, the QDRO form, and contact information will be discussed.

If you have any questions or need additional information, please contact me by email at [Jill.Bachus@tn.gov](mailto:Jill.Bachus@tn.gov) or by phone at (615) 253-3845.

Sincerely,

A handwritten signature in blue ink that reads "Jill Bachus". The signature is fluid and cursive, with the first name "Jill" and last name "Bachus" clearly distinguishable.

Jill Bachus  
Director, TCRS

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: \_\_\_\_\_

Rule ID(s): \_\_\_\_\_

File Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Board of Trustees of the Tennessee Consolidated Retirement System
<b>Division:</b>	
<b>Contact Person:</b>	Jill Bachus
<b>Address:</b>	502 Deaderick Street, 15 <sup>th</sup> Floor Andrew Jackson Building, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 253-3845
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**Revision Type (check all that apply):**

- ☐ Amendment  
☒ New  
☐ Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1700-03-03	Qualified Domestic Relations Orders
Rule Number	Rule Title
1700-03-03-.01	Purpose
1700-03-03-.02	Definitions
1700-03-03-.03	Payment by TCRS
1700-03-03-.04	Submission of Orders
1700-03-03-.05	Requirements for a Valid QDRO
1700-03-03-.06	Review of Orders
1700-03-03-.07	Determination of Qualified Order
1700-03-03-.08	Effect of a Valid QDRO
1700-03-03-.09	Benefits Affected by a QDRO
1700-03-03-.10	Benefits Resulting from Resuming Membership
1700-03-03-.11	Submission of Amended Order

1700-03-03-.12	Termination of QDRO
1700-03-03-.13	Alternate Payee's Information
1700-03-03-.14	Cost of Living Adjustments

#### Rule 1700-03-03-.01 Purpose

The rules in this chapter implement T.C.A. § 8-36-128.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.02 Definitions

In addition to the definitions contained in T.C.A. § 8-34-101, the following definitions are applicable to this chapter:

- (1) Alternate payee means a former spouse of a member or retiree who is recognized by a qualified domestic relations order as having a right to receive all or a portion of the benefits payable by the retirement system with respect to such member or retiree.
- (2) Qualified domestic relations order ("QDRO") has the same meaning as provided in § 414(p) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 414(p); provided, that such order may only relate to the provision of marital property rights for the benefit of the former spouse of the member or retiree.
- (3) Refund means a withdrawal of the member's accumulated contributions pursuant to T.C.A. § 8-37-210.

Authority: T.C.A. §§ 8-34-101, 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.03 Payment by TCRS

The retirement system will make payment of a retirement allowance or refund only as directed by statute or by a QDRO. After the retirement system determines that an order is a QDRO, the retirement system shall make payments to the alternate payee as directed by the QDRO at the time that a member begins receiving a monthly retirement allowance or receives a refund of contributions, unless the retirement system receives a certified copy of an order from a court of competent jurisdiction that withdraws or supersedes the previous order.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.04 Submission of Orders

A person who wishes to have the retirement system review a domestic relations order to determine whether it is a QDRO for the purpose of receiving retirement system payments shall submit a copy of a signed domestic relations order to the retirement system. Such order shall be on the form provided by the retirement system and must contain all requirements prescribed by these rules. The retirement system will reject any order that is not on the form provided. The copy shall be certified by the clerk of the court that entered the order. The retirement system shall not make a determination for orders not yet entered by the court.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.05 Requirements for a Valid QDRO

- (1) The retirement system will accept a court order as a valid QDRO if the order meets all of the following requirements:
  - (a) The order must relate to the provision of marital property rights for the benefit of the former spouse of the member or retiree.
  - (b) The order must be a certified copy of an original or amended order dated on or after the effective date of the rules in this Chapter.



- (c) The order must have been issued by a court of competent jurisdiction in a divorce proceeding that provides for the distribution of property, or any proceeding to amend or enforce such a property distribution.
  - (d) The order must identify the Tennessee Consolidated Retirement System as the retirement system to which it is directed.
  - (e) The order must contain the name, address, and social security number of the member.
  - (f) The order must contain the name, address, and social security number of the alternate payee.
  - (g) The order must express any amount to be paid to the alternate payee from a member's retirement allowance as a dollar amount per month or as a percentage per month.
  - (h) The order must contain the beginning and ending dates of the marriage of the member and the alternate payee and assign a portion of the member's retirement allowance under the retirement system based upon the period of marriage.
  - (i) The order must contain an assignment of the retirement allowance based upon the value of a member's entitlement under the retirement system if he or she were to retire at full retirement age utilizing the regular service retirement allowance without taking into account an early retirement penalty for his or her total creditable service through the valuation date.
  - (j) The order must express any amount to be paid to the alternate payee from a member's refund as a dollar amount or as a percentage of the refund.
  - (k) The order must contain a provision authorizing the retirement system to increase the amount payable to the alternate payee each month based upon the alternate payee's share of any cost of living adjustment received by the member.
  - (l) The order must contain a provision directing the director to make payment to the alternate payee in accordance with the QDRO until either the member or the alternate payee dies, whichever occurs first. The order must contain a provision that provides that the QDRO becomes null and void upon the death of the member or the alternate payee.
- (2) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement will not be accepted by the retirement system as a valid QDRO.
  - (3) The order may specify an alternative method for the parties to verify their social security numbers to the retirement system, if the court finds that omission of the numbers in the order is necessary to reduce the risk of identity theft. The order is not a QDRO if the retirement system finds that the method of verification is insufficient for the purposes of payment of benefits or reporting of income for tax purposes.

Authority: T.C.A. §§ 8-34-313, 8-36-128, and 8-36-206.

#### Rule 1700-03-03-.06 Review of Orders

The director of the retirement system or the director's designee shall review the order for compliance with requirements imposed by statute or rule. Upon completion of the review, the director or the designee shall notify the member or retiree and each alternate payee in writing of the determination.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.07 Determination of Qualified Order

- (1) Any determination that an order is a QDRO is voidable or subject to modification if the retirement system determines that the provisions of the order have been changed or that circumstances relevant to the determination have changed.
- (2) If the director or designee determines that an order is not a QDRO, the notice shall identify the provisions of the order that do not meet the requirements of applicable statutes or rules.
- (3) Any determination by the director or the director's designee that an order is not a QDRO is a final decision by the retirement system. No appeal to the board of trustees is authorized. A party adversely affected by a determination may file a motion for reconsideration with the director no later than thirty (30) days after the date such determination is rendered if the party wishes to contest the determination. The director will review the motion for reconsideration as a lesser appeal as defined in Chapter 1700-03-02.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.08 Effect of a Valid QDRO

- (1) Retirement Allowance.
  - (a) After the retirement system has determined that a QDRO applying to a retirement allowance is valid, one of the following will occur:
    1. If the member has not yet started receiving a retirement allowance, the QDRO will be placed in the member's file and will be implemented when the first affected payment commences; or
    2. If the member is already receiving a retirement allowance subject to the QDRO, payment to the alternate payee will begin on the monthly payment date prescribed in T.C.A. § 8-36-117 in the month following approval by the retirement system.
- (2) Refund of Member Contributions.
  - (a) After the retirement system has determined that a QDRO applicable to a member's refund is valid, one of the following will occur:
    1. If the QDRO provides for the allocation of a refund and the member has not applied for a refund, the QDRO will be placed in the member's file and will be implemented when payment of the affected refund is made;
    2. If a refund application is pending when the retirement system receives a QDRO that purports to apply to the refund but the refund payment has not yet been made, the retirement system will hold the portion of the refund that would be payable to the alternate payee until it receives clarification from the court as to whether the QDRO is effective against the pending refund. It is the member's or alternate payee's responsibility to obtain clarification from the court and notify the retirement system of the court's clarification; or
    3. If a refund payment has already been made when the retirement system receives a QDRO that purports to apply to the refund, the QDRO shall not be effective against that refund.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.09 Benefits Affected by a QDRO

- (1) A QDRO may apply only to the following benefits administered by the retirement system:

- (a) A monthly retirement allowance; or
  - (b) A member's refund of employee contributions.
- (2) A QDRO shall not apply to any of the following:
- (a) A survivor benefit;
  - (b) Any disability benefit;
  - (c) An error refund; or
  - (d) Any other benefit.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.10 Benefits Resulting from Resuming Membership

If a member terminates membership in the retirement system by withdrawal of contributions, the retirement system shall pay all or a portion of the amount withdrawn to any alternate payee as directed by a QDRO. If the former member later resumes membership in the retirement system, then the retirement system shall pay to an alternate payee no portion of retirement allowance payable to the member or retiree which result from the resumption of membership, even if the retirement allowance is a result in part from reinstatement of service credit initially credited during marriage. A member who reinstates service credit by depositing amounts previously withdrawn or refunded shall deposit the entire amount withdrawn or refunded, regardless of whether a portion or all of the amount was paid to the alternate payee. The reinstatement fee shall be based on the total amount withdrawn, regardless of whether a portion or all of the amount was paid to an alternate payee.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.11 Submission of Amended Order

If a court amends an order that the retirement system has determined to be a QDRO, the member or retiree or alternate payee shall submit a certified copy of the amended order to the retirement system. The retirement system shall review any amended order for compliance with the requirements imposed by rule or statute for an original order. An amended order will be applied to member benefits beginning on the date the amended order is determined by the retirement system to be valid.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.12 Termination of QDRO

The retirement system will consider a QDRO as having been terminated in any of the following situations:

- (1) Upon receipt of a certified copy of a court order terminating the QDRO;
- (2) Upon payment of all amounts provided for in the QDRO;
- (3) When the person to whom the QDRO applies ceases to be an annuitant of the System; or
- (4) Upon the death of the alternate payee or the member.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.13 Alternate Payee's Information

An alternate payee is responsible to report to the retirement system in writing each change in his or her name, residence address, and direct deposit information. When a member's retirement allowance or refund subject to a QDRO becomes payable, the retirement system will send notice to the last address of the alternate payee reported to the retirement system that the retirement allowance or refund is payable. Other than sending such notice, the retirement system shall have no duty to take any other action to locate an alternate payee.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

#### Rule 1700-03-03-.14 Cost of Living Adjustments

The alternate payee will receive a proportionate share of any cost of living adjustment received by the member. The retirement system will calculate the amount of any adjustment payable to the alternate payee under the QDRO. The amount of any adjustment payable to the alternate payee is the percentage of adjustment due the member multiplied by the alternate payee's monthly retirement allowance as of the date of the adjustment.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
David H. Lillard, Jr.					
Jill Bachus					
Rebecca Hunter					
Tre Hargett					
Deborah Taylor Tate					
Larry Martin					
Justin Wilson					
Angie Judish					
Shannon Jones					
Tony Crisp					
Patsy Moore					
Harold Morrison					
Kevin Fielden					
Alfred W. Laney					
Bob Wormsley					
Bill Kemp					
Ken Wilber					
Michael Barker					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on \_\_\_\_\_ (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: \_\_\_\_\_

Title of Officer: \_\_\_\_\_

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter

Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

DRAFT

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The Regulatory Flexibility Addendum is not applicable.

DRAFT



### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule does not have a projected impact on local governments.



### Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules establish the guidelines for the Tennessee Consolidated Retirement System to accept Qualified Domestic Relations Orders pursuant to T.C.A. § 8-36-128, which provides that the Tennessee Consolidated Retirement System shall honor claims under Qualified Domestic Relations Orders at a time designated by the state treasurer.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 8-36-128 provides that the Tennessee Consolidated Retirement System shall honor claims under Qualified Domestic Relations Orders at a time designated by the state treasurer. 26 U.S.C. § 414(p) contains requirements for a Domestic Relations Order to be considered Qualified under the Internal Revenue Code in regard to qualified retirement plans.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons who are members of the Tennessee Consolidated Retirement System; the Tennessee Consolidated Retirement System has received numerous requests to promulgate rules to begin accepting Qualified Domestic Relations Orders.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is not estimated to be an increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule. The Tennessee Consolidated Retirement System will process such orders utilizing existing staff; payments to alternate payees through the orders will occur in the same manner as benefit payments are already processed.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Jill Bachus, Director, Tennessee Consolidated Retirement System, Department of Treasury and Courtney Hess, Assistant General Counsel, Department of Treasury.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jill Bachus, Director, Tennessee Consolidated Retirement System, Department of Treasury and Courtney Hess, Assistant General Counsel, Department of Treasury.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Jill Bachus, Director, Tennessee Consolidated Retirement System, Department of Treasury, 502 Deaderick Street, 15<sup>th</sup> Floor, Andrew Jackson Building; 615-253-3845; [Jill.Bachus@tn.gov](mailto:Jill.Bachus@tn.gov), and Courtney Hess, Assistant General Counsel, Department of Treasury, 502 Deaderick Street, 13<sup>th</sup> Floor, Andrew Jackson Building; 615-532-3067; [Courtney.Hess@tn.gov](mailto:Courtney.Hess@tn.gov)

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.